No. 94-12

(17)

Supreme Court, U.S.
FILED
MAR 31 1995
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

SEMINOLE TRIBE OF FLORIDA,

Petitioner,

vs.

STATE OF FLORIDA AND LAWTON CHILES, GOVERNOR OF FLORIDA,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JULY 1, 1994
CERTIORARI GRANTED JANUARY 23, 1995

BEST AVAILABLE COPY

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NOTATION REGARDING ITEMS OMITTED FROM JOINT APPENDIX

The following portions of the record below have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed Petition for Certiorari:

Document	Page in Petition for Certiorari
A. Opinion, *Seminole Tribe of Florida v. Florida*, 11 F.3d 1016 (11th Cir. 1994), Jan. 18, 1994	1a
B. Opinion, *Seminole Tribe of Florida v. Florida*, 801 F. Supp. 655 (S.D. Fla. 1992), June 18, 1992	26a
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RELEVANT DOCKET ENTRIES (DISTRICT COURT FOLLOWED BY COURT OF APPEALS)

Docket No. 91-6756
United States District Court for the Southern District of Florida

Date	No.	Proceedings
9/19/91	1	COMPLAINT filed: FILING FEE $120.00 RECEIPT # 198237 TEB A-7 (msf) [Entry date 09/25/91]
10/10/91	4	ANSWER and defenses to Complaint by State of Florida, Lawton Chiles (Attorney Jonathan A. Glogau), (ch) [Entry date 10/18/91]
12/16/91	14	MOTION by State of Florida, Lawton Chiles to dismiss for lack of subject matter jurisdiction (11) [Entry date 12/28/91]
1/7/92	22	MEMORANDUM of points and authorities by Seminole Tribe in opposition to [14-1] motion to dismiss for lack of subject matter jurisdiction (sl) [Entry date 01/14/92]

Relevant Docket Entries

1/30/92	29	ORDER [14-1] motion to dismiss for lack of subject matter jurisdiction under advisement. (See order for further details) (signed by Judge Stanley Marcus on 1/29/92) CCAP (ch) [Entry date 02/05/92]
3/10/92	34	ORDER granting [33-1] motion to extend time to file motion for leave to file brief amicus curiae. United States have until 3/11/92 to file motion. (signed by Judge Stanley Marcus on 3/9/92) CCAP (ch) [Entry date 3/12/92]
4/13/92	38	Transcript filed re: hearing Date: 1/13/92 Before Judge: Stanley Marcus Volume No.: 1 Number of pages: 57 (ch) [Entry date 04/17/92]
6/18/92	46	ORDER denying [14-1] motion to dismiss for lack of subject matter jurisdiction (signed by Judge Stanley Marcus on 6/18/92) CCAP (ch) [Entry date 06/24/92]

Relevant Docket Entries

7/9/92	47	NOTICE OF APPEAL by State of Florida, Lawton Chiles from the Order denying motion to dismiss which was entered on 06/24/92 (Copies to USCA and Attorney of record). Fee Status: not paid (INTERLOCUTORY) (tb) [Entry date 07/13/92] [Edit date 07/14/92]
9/25/92	63	JOINT PRETRIAL STIPULATION by Seminole Tribe, State of Florida, Lawton Chiles (ch) [Entry date 09/28/92]
10/9/92	66	MOTION by State of Florida, Horse Council for summary judgment (hr) [Entry date 10/13/92]
10/9/92	69	MOTION with memorandum in support by Seminole Tribe for summary judgment (hr) [Entry date 10/13/92]
10/20/92	—	Transmitted record on appeal to U.S. Court of Appeals: [47-1] appeal by Lawton Chiles, State of Florida consisting of 2 vols. of pleadings & 2 vols. transcripts (USCA#92-4652) (tb) [Entry date 10/26/92]

Relevant Docket Entries

10/21/92	—	Certificate of readiness transmitted to USCA Re: [47-1] appeal by Lawton Chiles, State of Florida (tb) [Entry date 10/22/92]
11/2/92	80	MEMORANDUM in RESPONSE by State of Florida, Lawton Chiles to [69-1] motion for summary judgment (ch) [Entry date 11/03/92]
11/2/92	81	MEMORANDUM by Seminole Tribe in opposition to [66-1] motion for summary judgment (ch) [Entry date 11/03/92]
11/18/92	88	REPLY by State of Florida and Lawton Chiles to response to [66-1] motion for summary judgment (vr) [Entry date 11/19/92]
11/20/92	89	REPLY by Seminole Tribe to response to [69-1] motion for summary judgment (mg) [Entry date 11/23/92]
12/8/92	92	MEMORANDUM by Seminole Tribe in support of [69-1] motion for summary judgment and motion to reopen discovery (hr) [Entry date 12/09/92]

Relevant Docket Entries

12/23/92	93	RESPONSE by [State of Florida, Lawton Chiles to] Seminole Tribe, State of Florida . . . Notice of additional authority and addition facts in support of summary judgment and Motion to re-open discovery to [92-1] support memorandum (dt) [Entry date 12/28/92]
3/19/93	102	MOTION by Seminole Tribe supplemental for summary judgment referring to: [69-1] motion for summary judgment (dt) [Entry date 03/25/93]
3/19/93	102	MEMORANDUM by Seminole Tribe in support of [102-1] supplemental motion supplemental for summary judgment (dt) [Entry date 03/25/93]
4/6/93	107	RESPONSE by State of Florida, Lawton Chiles to [102-1] supplemental motion supplemental for summary judgment (ch) [Entry date 04/09/93]

Relevant Docket Entries

4/12/93	108	REPLY by Seminole Tribe to response to [102-1] supplemental motion supplemental for summary judgment, additional examples of permitting Casino nights, and additional authorities (ch) [Entry date 04/13/93]
9/22/93	114	ORDER denying [102-1] supplemental motion supplemental for summary judgment, denying [69-1] motion for summary judgment, granting [66-1] motion for summary judgment; Defendant submit proposed order of final judgment within 15 days (signed by Judge Stanley Marcus on 9/22/93) CCAP -M (dt) [Entry date 10/01/93]
10/20/93	116	FINAL JUDGMENT for State of Florida, Lawton Chiles against Seminole Tribe. Plaintiff having failed to prove violation of requirements of IGRA, this case is dismissed and parties shall go hence without day except the court

Relevant Docket Entries

		reserves jurisdiction to award costs. (signed by Judge Stanley Marcus on 10/15/93) CCAP/M 10/25/93 (ch) [Entry date 10/25/93]
11/16/93	117	NOTICE OF APPEAL by Seminole Tribe from Final Judgment entered 10/25/93. Fee Status: PAID $105.00 Receipt #631031 (Copies to USCA and Counsel of record). (vp) [Entry date 11/17/93]
1/21/94	—	Certificate of readiness transmitted to USCA Re: [117-1] appeal by Seminole Tribe USCA NUMBER: 93-5256 (tb)
1/21/94	—	Transmitted record on appeal to U.S. (Miami) Court of Appeals: [117-1] appeal by Seminole Tribe consisting of 3 volumes of pleadings, 1 accordian folder. (tb)

Relevant Docket Entries

Docket No. 92-4652
United States Court of Appeals
for the Eleventh Circuit

EXPEDITED
DATE DOCKETED 7-17-92

APPELLANT – STATE OF FLORIDA

APPELLEE – SEMINOLE TRIBE OF FLORIDA

RELATED # 93-5256

CONS # 92-6244

SEMINOLE TRIBE OF FLORIDA,

Plaintiff-Appellee,

versus

STATE OF FLORIDA, LAWTON CHILES, Governor of the State of Florida,

Defendants-Appellants.

JURISDICTIONAL SCREENING

FILINGS/ACTIONS
8-3-92 Staff Atty. Jurisdiction
8-4-92 Probable Jurisdiction Noted

Relevant Docket Entries

RECORD & EXHIBITS

Filed			Due
11/2/92	ROA (#Vols. 4: P2 T2)	§ 6	10/29/92

BRIEFING INFORMATION

Filed			Due
11/16/92	Brief for Appellant D: 11/13	§ 6	11/13/92
11/25/92	Record Excerpts Aplt.		11/30/92
12/14/92	D: 12/11/92	§ 6	12/11/92
12/24/92	Reply Brief for Appellant d 12/23/92	§ 6	12/23/92

EXTENSIONS

8-27-92 Consol. with 92-6244

OTHER MOTIONS & ORDERS

2/8/94 Flg. motion for leave to file amicus brief in support of the petitions for rehearing and suggestions for rehearing en banc by the states of California, Connecticut, Kansas, Mississippi, Montana, Nebraska, Nevada, Oklahoma, South Dakota, Washington and Wyoming. wl (court-2/8/94)

Relevant Docket Entries

2/17/94 Flg. ORDER: The motion for leave to file an amicus brief in support of the petitions for rehearing and suggestions for rehearing en banc, filed by the states of California, Connecticut, Kansas, Mississippi, Montana, Nebraska, Nevada, Oklahoma, South Dakota, Washington and Wyoming, is GRANTED, GBT wl

4/13/94 Flg. appellee's motion to stay mandate pending petition for writ of certiorari wl (court-4/14/94)

CALENDAR INFORMATION

11/24/92 Argument Scheduled for 1/7/93 in ATLANTA #338

JUDGMENT AND MANDATE INFORMATION

1/18/94 Judgment Entered

4/28/94 Mandate Stayed to 7/5/94

REHEARING INFORMATION

2/7/94(j) Petition for Rehearing (State of Florida only)
Apt. X Ape __ Panel X En Banc __

2/17/94(j) Court Ordered Response By Amicus states

4/6/94 Order Denying Rehearing

Relevant Docket Entries

SUPREME COURT INFORMATION
No. 94-12 & 94-35
94-189 94-219

7/11/94 Notice of Flg. Cert. on 7/1/94 (Seminole)

7/13/94 Notice of Flg. Cert. on 7/1/94 (AL)

8/3/94 Not. of Flg. Cert. 7/29/94 (Poarch)

8/18/94 Not of Flg. Cert. 7/28/94-FL-Chiles

COMPLAINT FILED SEPTEMBER 19, 1991, WITH EXHIBITS

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

No. 91-6756 CIV — MARCUS

SEMINOLE TRIBE of FLORIDA

Plaintiff,

v.

STATE OF FLORIDA, LAWTON CHILES, Governor of the State of Florida,

Defendants.

COMPLAINT

INTRODUCTION

1. The matter in controversy arises under the Indian Gaming Regulatory Act, Pub. L. No. 100-497, 25 U.S.C. §§ 2701 to 2721.

2. This action arises from the failure of the State of Florida to negotiate in good faith to conclude a tribal-state gaming compact as required by the Indian Gaming Regulatory Act, 25 U.S.C. § 2710(d)(3).

JURISDICTION

3. The plaintiff Seminole Tribe of Florida (hereinafter the "Tribe") invokes the jurisdiction of this court pursuant to Section

Complaint

11(d)(7)(A) of the Indian Gaming Regulatory Act, 25 U.S.C. § 2710(d)(7)(A). The jurisdiction of this court is also invoked pursuant to 28 U.S.C. §§ 1331 and 1362. Plaintiff also seeks declaratory relief pursuant to 28 U.S.C. § 2201.

PARTIES

4. The plaintiff Seminole Tribe of Florida is a federally recognized Indian tribe with a constitution, governing body, and by-laws, duly organized under Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476, 48 Stat. 984. Seminole Tribal headquarters are in Broward County, Florida. The Seminole Tribe of Florida occupies and is recognized as possessing powers of self-government over its tribal Indian lands. The Tribe conducts gaming operations under the Indian Gaming Regulatory Act on such lands, which were acquired in trust by the United States prior to October 17, 1988 as required by 25 U.S.C. § 2719 to qualify as the situs of tribally conducted gaming.

5. The defendant State of Florida, pursuant to the Indian Gaming Regulatory Act, is the entity which must negotiate in good faith with the Seminole Tribe to conclude a compact governing Class III gaming.

6. The defendant, Lawton Chiles, is Governor of the State of Florida and, by authority of that office, is responsible for negotiations with the plaintiff Tribe pursuant to the Indian Gaming Regulatory Act.

BASIS OF THE CLAM

7. The Indian Gaming Regulatory Act was enacted in 1988.

The Act's express purpose was to provide a federal statutory basis for operation of gaming by Indian tribes on Indian lands for the purpose of promoting economic development and strong tribal government The Indian Gaming Regulatory Act provides a comprehensive federal regulatory scheme to determine whether a specific type of gaming will be permissible on Indian lands. Class I games (social games or traditional forms of Indian gaming) are not subject to regulation. Class II games (Bingo and similar to bingo games as well as certain card games) are subject only to tribal regulation under the oversight of the National Indian Gaming Commission. Class III games (all other games) are permitted only if conducted "in a state that permits such gaming for any purpose by any person, organization, or entity," in conformance with a tribal-state compact. 25 U.S.C. §§ 2703, 2710(d).

8. The Indian Gaming Regulatory Act requires that, upon a tribe's request, a state must enter into good faith compact negotiations for the conduct of Class III gaming by the tribe. 25 U.S.C. § 2710(d)(3)(A).

9. The Indian Gaming Regulatory Act makes tribally proposed Class III gaming the mandatory subject of a compact negotiation between a tribe and that state if the state permits such gaming "for any purpose by any organization or entity." 25 U.S.C. § 2710(d)(1)(B).

10. The State of Florida has evolved a broad public policy favoring the conduct of Class III gaming in a variety of circumstances. The State, by statute, expressly authorizes play of the following games of chance which fall within the category of games designated by Indian Gaming Regulatory Act as Class III games: (1) parimutuel betting on horse racing; (2) parimutuel

betting on dog racing; (3) parimutuel betting on Jai Alai; (4) off track betting at parimutuel site, (5) poker and (6) a state-operated, state wide lottery, utilizing on-line computer gambling devices, which may be operated in an unlimited variety of forms selected by the State Lottery Department.

11. The State also knowingly permits charities to operate Class III games of chance including craps, blackjack, roulette, and raffles at charitable fund raising events, variously called "Casino Nights," "Monte Carlo Nights," "Las Vegas Nights" or other similar terms.

12. The State also permits the use of computers and other electronic gambling devices in the sale of lottery tickets and the selection of numbers played by the public in the lottery, in the operation of Jai Alai and in the playing of bingo at state authorized bingo halls.

13. On January 29, 1991, James E. Billie, Chairman of the Seminole Tribe, wrote to defendant Governor Lawton Chiles requesting commencement of negotiations between the Tribe and the State of Florida for entry into a tribal-state compact providing for the conduct by the Tribe of Class III gaming activities on Seminole tribal Indian lands pursuant to the Indian Gaming Regulatory Act, Pub.L. 100-497, 25 U.S.C. §§ 2701 to 2721. (Exhibit A)

14. In early February, 1991, Jim Shore, General Counsel to the Tribe, received a telephone call from J. Hardin Peterson, Jr., the Governor's General Counsel, saying that Governor Chiles had authorized him to represent the Governor's Office in negotiating a compact and inviting the Tribe to submit a proposed compact for review. This was confirmed by Mr. Peterson's letter

dated February 15, 1991. (Exhibit B) In both the telephone conversation and the letter, Mr. Peterson stressed that the compact negotiations could be concluded very simply and without difficulty.

15. On March 4, 1991, Mr. Shore, representing Chairman James Billie, submitted a specific form of proposed compact providing for tribal operation of poker, as well as any and all video, electronic and computer aided games which duplicate poker, bingo, pull-tabs, lotto, punchboards, tip jars, instant bingo or other games similar to bingo. In his accompanying letter, Mr. Shore indicated that the Tribe was making a "conservative" request in order to "make it possible for the compact to be favorably concluded in a short time." (Exhibit C)

16. The State did not respond to the Tribe's March 4 letter until nearly three months later when, by letter dated May 24, 1991, the Governor's representative, Mr. Peterson, rejected all but one of the Tribe's compact requests and advised the Tribe that the only game proposed by the Tribe which could be the subject of a compact under Florida law was the card game of poker. (Exhibit D)

17. On June 18, 1991, Chairman Billie wrote to Governor Lawton Chiles to express the Tribe's dissatisfaction with the content of the Peterson May 24 letter and to request the personal involvement of the Governor in the compact negotiations. That letter also responded to the State's position by submitting additional games for consideration in the negotiations that appeared to meet some of the objections raised in the May 24 Peterson letter. At the same time, the Tribe requested that negotiations be expanded to include casino gaming. (Exhibit E)

18. On June 25, 1991, the Tribe submitted a ten-page legal memorandum providing specific support for the compact provisions it had submitted to Mr. Peterson and Governor Chiles.

19. On July 25, 1991, Mr. Peterson wrote to Chairman Billie on behalf of Governor Chiles (Exhibit F) and explained his May 24 letter as follows:

> I regret that you were disappointed at the content of my letter of May 24, 1991, but it was simply my intent to advise the Seminole Tribe of my understanding of the requirements of the Indian Gaming Regulatory Act and to provide the Tribe with some views expressed to me by the Office of the Attorney General.

20. On August 22, 1991, representatives of the Seminole Tribe met with State representatives to discuss the Tribe's pending compact request. At this meeting, the State expressed willingness to negotiate concerning poker and other card games, raffles and parimutuel wagering on dog and horse racing and jai alai. Mr. Peterson, however, repeated his earlier written assertion that the State would not negotiate for any form of gaming that was not expressly allowed by Florida state law and announced that the State refused to negotiate compact provisions for any machine gaming (video, electronic or computer aided games) or for any form of casino gaming.

21. At a final meeting with Tribal representatives on September 17, 1991, representatives of the State of Florida again reasserted the State's position that machine gaming and casino gaming are not subject to the Indian Gaming Regulatory Act compact negotiation requirement.

22. The Indian Gaming Regulatory Act required the State and its Governor to respond in good faith to the Tribe's request to negotiate within 180 days. 25 U.S.C. § 2710(d)(7)(B)(i).

23. More than 180 days have expired since the Tribe's January 29, 1991 request that the State enter into negotiations for a tribal-state gaming compact.

24. The State and its Governor have failed to respond in good faith to the Tribe's request for compact negotiations and have not conducted those negotiations in good faith. Specifically, they have failed to give good faith consideration to the Tribe's request for inclusion of various forms of machine gaming and casino gaming in the compact negotiation. They have maintained that position even though the proposed tribal games are 1) consistent with the State's broad public policy favoring the conduct of Class III gaming in a variety of circumstances, and 2) are specifically comparable to specific forms of gaming that the State itself either expressly authorizes by law or allows to operate. Despite the Tribe's stated readiness to negotiate for the purpose of entering into a compact, the State and its Governor have refused to enter into any negotiation for inclusion of such gaming in a tribal-state compact. They have thus violated the Indian Gaming Regulatory Act requirement of good faith negotiation.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays this honorable court to:

1. Order the State, acting through the Governor, and the Tribe pursuant to 25 U.S.C. § 2710(d)(7)(B)(iii) to conclude a tribal-state compact governing the conduct of gaming activities

on Seminole Indian lands within a sixty-day period from entry of the Order, and appoint a mediator to resolve any impasse in accordance with 25 U.S.C. § 2710(d)(7)(B)(iv).

2. Enter a declaratory judgment that the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 to 2721, by reason of the State of Florida's permission for the operation "for any purpose by any person, organization or entity" of games described in paragraphs 10-12 above, obligates the State of Florida to negotiate in good faith with the Tribe regarding the conduct of any or all Class III games of chance on the Seminole Indian lands, including use of machines in the operation of those games, and including casino gaming.

3. Award plaintiff the costs of this action.

4. Order such other and further relief as the court deems just.

Respectfully submitted,

s/ Bruce S. Rogow
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s/ Jerry C. Straus
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Complaint

Attorneys for the Seminole Tribe
of Florida

Dated: September 17, 1991

Complaint

EXHIBIT A

SEMINOLE TRIBE
of Florida

[letterhead text not reproduced]

January 29, 1991

Honorable Lawton Chiles, Governor
The Capital
Tallahassee, FL 32399

Dear Governor Chiles:

The Seminole Tribe of Florida is desirous of exercising authority provided for in the Indian Gaming Regulatory Act (IGRA) which permits the conduct of certain games classified as Class III upon entry into a compact with the state. Accordingly, I hereby request, pursuant to 25 U.S.C. § 2710(d)(3)(A) of IGRA, that negotiations be entered into between the Seminole Tribe of Florida and the State of Florida for the adoption of a compact providing for the conduct of Class III games on Seminole tribal Indian lands. The Tribal Council has authorized me to represent the Tribe in these negotiations.

Please advise me of the name of your representative in these negotiations so that we might contact that official and arrange a time and place for an initial meeting.

Sho Naa Bisha,

s/ James E. Billie
James E. Billie
Chairman

EXHIBIT B

STATE OF FLORIDA
OFFICE of the GOVERNOR

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

LAWTON CHILES
GOVERNOR

February 15, 1991

Jim Shore, Esq.
General Counsel
Seminole Tribe of Florida
6073 Stirling Road
Hollywood, Florida 33024

Dear Mr. Shore:

Governor Chiles has forwarded to me for attention the letter of Mr. James E. Billie regarding negotiations between the Seminole Tribe of Florida and the State of Florida, as provided in 25 U.S.C. § 2710(d)(3)(A) of IGRA.

Governor Chiles has authorized me to represent the Governor's Office in negotiations with the Seminole Tribe of Florida.

As we had discussed by telephone, I believe we can accomplish these negotiations very simply if you will submit to this office a proposed compact for our review. Providing the compact meets requirements of the federal statute and the laws of this state, we can approve the compact.

I look forward to working with you in this matter.

With kindest personal regards.

Sincerely,
s/ J. Hardin Peterson
J. Hardin Peterson
General Counsel

JHP/la

EXHIBIT C

SEMINOLE TRIBE OF FLORIDA

[letterhead text not reproduced]

March 4, 1991

J. Hardin Peterson, Esq.
General Counsel
State of Florida
Office of the Governor
The Capitol
Tallahassee, FL 32399

Dear Mr. Peterson:

Reference is made to our recent telephone conversations and your letter of February 15, 1991, in which you advised me that you have been authorized by Governor Chiles to represent the State of Florida in compact negotiations as provided in 25 U.S.C. § 2710. As I advised you, I have been designated by Chairman James Billie to represent the Seminole Tribe in these negotiations.

On behalf of the Tribe, I would like to thank you for the prompt response to our request and for your indication that the Governor expects to approve our submittal if it meets the requirements of the federal statute and applicable state law.

In response to this, we are hereby submitting a proposed Compact that has been signed by Chairman Billie and is ready for execution by Governor Chiles. In order to expedite the process, we have limited our request to authorization of poker in various

forms and for various forms of video, electronic and computer versions of poker, Bingo, pull tabs, lotto or other games authorized by IGRA or the proposed Compact.

We hope that the conservative nature of our request will make it possible for the Compact to be favorably concluded in a short time.

Sincerely

s/ Jim Shore
Jim Shore
General Counsel

A COMPACT
between
THE SEMINOLE TRIBE OF FLORIDA
and
THE STATE OF FLORIDA
PROVIDING FOR THE CONDUCT OF TRIBAL
CLASS III GAMING
on
TRIBAL LANDS OF THE SEMINOLE TRIBE OF FLORIDA

THIS COMPACT is made and agreed to by and between the THE SEMINOLE TRIBE OF FLORIDA, an Indian Tribe organized under the Laws of the United States of America as provided for by Section 16 of the Act of June 18, 1934, 48 Stat. 984, 6073 Stirling Road, Hollywood, Florida 33024 (hereinafter referred to as "Tribe"), acting through its Chairman, James E. Billie, and the STATE OF FLORIDA (hereinafter "State"), acting through its Governor, the Honorable Lawton Chiles.

RECITALS

WHEREAS, the Tribe is a federally-recognized Indian Tribe (organized under the provisions of the Indian Reorganization Act of June 18, 1934, 48 Stat. 984) and its governing body, the Tribal Council (hereinafter "Council"), is authorized by the tribal constitution to enter into contracts including this agreement with the State; and

WHEREAS, the Tribe exercises governmental power over tribal lands located within the boundaries of the State which are defined by Section 4 (4) of IGRA (25 U.S.C. § 2703(4))as "Indian lands" and

WHEREAS, the State is a sovereign state of the United States with all rights and powers thereto pertaining; and

WHEREAS, the Congress of the United States has by the Indian Gaming Regulatory Act (25 U.S.C. § 2710 *et seq.*) (hereinafter "IGRA") authorized tribes and states to negotiate and enter into compacts for purposes of providing for the conduct of Class III gaming, as defined by IGRA by Indian Tribes on their lands where "a state permits such gaming for any purpose by any person, organization, or entity," and

WHEREAS, "Class III gaming" means the class of gaming permitted in Florida by its authorization of any game which, if conducted by the Tribe would not be Class I gaming or Class II gaming as defined in Sections 4(6) and 4(7) of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2703(6) and (7), and

WHEREAS, the State permits a broad range of games which would be Class III games if conducted by the Tribe, including the Florida Lottery, and other games as follows:

1) Pari-mutuel or other wagering on dog racing and horseracing, including simulcasting thereof;

2) Pari-mutuel wagering on jai alai or pelota, or games of skill;

3) Wagering on card games, including poker, pinochle, bridge, rummy, canasta, hearts, dominoes, or mah jongg;

4) Casino nights; and

WHEREAS, the above conduct and authorization of these forms

of Class III gaming have satisfied the precondition, imposed by the United States Congress by enacting the Indian Gaming Regulatory Act, for the operation of lawful Class III gaming by the Tribe on Tribal lands in the State; and

WHEREAS, the tribe by a January 29, 1991 letter of the Tribal Chairman to the Governor, pursuant to the provisions of 25 U.S.C. § 2710(d)(3)(A), initiated negotiations with the State for the purpose of entering into a compact governing the conduct of Class III gaming activities on the Seminole Indian lands; and

WHEREAS, the State has responded to the Tribe's request and has in good faith negotiated this compact.

NOW, THEREFORE, the Tribe and the State agree and covenant as follows:

SECTION 1. Objectives

The objectives of the Tribe and State in making the Compact are as follows:

(1) to exercise authority to establish Class III gaming on Tribal lands in Florida as provided by the Congress of the United States by the enactment of the Indian Gaming Regulatory Act, P. L. 100-497, 25 U.S.C. § 2701 et seq. (the Act), and

(2) to provide for the operation of Class III gaming in which the Tribe shall have the sole proprietary interest, and

(3) to establish the rules for the regulation of Class III gaming operated by the Tribe on Tribal lands, and

(4) to establish guidelines for the licensing by the Tribe of primary gaming management officials and key employees, and

(5) to establish rules and procedures for ensuring that Class III gaming is conducted fairly and honestly by both the operators and by the patrons of any Class III gaming enterprise on Tribal lands.

SECTION 2. Authorized Class III Gaming

The Tribe may conduct the following games on tribal lands located within boundaries of the State which are defined by Section 4 (4) of IGRA (25 U.S.C. § 2703(4)) as "Indian lands":

a. Any and all forms of poker, including banking games;

b. Any and all video, electronic and computer aided games which duplicate poker, bingo, pull-tabs, lotto, punchboards, tip jars, instant bingo or other games similar to bingo.

SECTION 3. Regulation of Class III Gaming

(1) The following regulatory requirements shall apply to the conduct of Class III gaming authorized by this Compact. The Tribe shall maintain, as part of its lawfully enacted ordinances, at all times in which it conducts any authorized Class III gaming, requirements at least as restrictive as those set forth herein.

a. The Tribe may not hire, or employ, in connection with Class II gaming, any person who:

Complaint

(i) is under the age of 18;

(ii) has, within the immediately preceding five years, been convicted of or entered a plea of guilty or no contest to: a felony, any gambling-related offense, fraud or misrepresentation in any state, unless that person has been pardoned.

b. All accounting records shall be kept on a double entry system of accounting, maintaining detailed, supporting, subsidiary records. The Seminole Tribe shall maintain the following records for not less than three (3) years:

(i) Revenues, expenses, assets, liabilities and equity for each location at which Class III gaming is conducted;

(ii) Daily cash transactions for each game at each location at which Class III gaming is conducted, including but not limited to transactions relating to each gaming table bank, game drop box and gaming room bank;

(iii) All markers, IOU's, returned checks, hold checks or other similar credit instruments;

(iv) Individual and statistical game records (except card games) to reflect statistical drop, and statistical win;

(v) For video or other. electronic or electromechanical machine games, analytic reports which, by each machine shows the total

Complaint

amount of cash wagered and the total amount of prizes won;

(vi) Contracts, correspondence and other transaction documents relating to all vendors and contractors for not less than three years

(vii) Records of all tribal enforcement activities;

(viii) Audits prepared by or on behalf of the Tribe; and

(xi) Personnel information on all Class III gaming employes or agents, including rotation sheets, hours worked, employee profiles and background checks;

c. No person under the age of 18 may participate in any Class III game.

d. The Tribe shall not conduct any Class III gaming outside Tribal lands.

e. The rules of each card game shall be posted and be clearly legible from each table and must designate:

(i) The maximum rake-off percentage, time buy-in or other fee charged.

(ii) The number or raises allowed.

(iii) The monetary limit of each raise.

(iv) The amount of ante.

(v) Other rules as may be necessary.

(2) The regulatory requirements set forth in this section of this Compact shall be administered and enforced as follows:

a. The Tribe shall have primary responsibility to administer and enforce the regulatory requirements.

b. A representative of the State designated in writing by the Governor shall have the right, upon reasonable notice, to inspect all premises on which Class III gaming is conducted and the right to inspect and copy all tribal records relating to Class III gaming.

c. The Tribe shall have the right to inspect and copy all State records concerning all Class III gaming conducted by the Tribe; provided that the State may withhold access to records created or maintained in conjunction with an ongoing criminal investigation and any prosecution resulting therefrom.

d. In the event the State believes that the Tribe is not administering and enforcing the regulatory requirements set forth herein, it may involve the procedures set forth in Section 5 of this Compact.

(3) When the Tribe enters into a management contract for the operation of any Class III gaming or component thereof, the State shall be advised of such contract.

SECTION 4. Amendments.

The terms and conditions of this Compact may be modified,

amended or otherwise altered by written agreement of the parties which is approved by the Secretary of the Interior.

SECTION 5. Dispute Resolution.

(1) In the event either party believes that the other party has failed to comply with any requirement of this Compact, it may invoke the following procedure:

a. The party asserting noncompliance shall serve written notice on the other party. The notice shall identify the specific statutory, regulatory or compact provision alleged to have been violated and shall specify the factual basis for the alleged noncompliance. Representatives of the state and Tribe shall thereafter meet within thirty (30) days in an effort to resolve the dispute.

b. In the event an allegation by the State is not resolved to the satisfaction of the State within ninety (90) days after service of the notice set forth in Section 5(1)(a), the State may serve upon the office of the Tribal Chairman a notice to cease conduct of such gaming. Upon receipt of such notice, the Tribe may elect to stop the gaming activity specified in the notice or invoke arbitration and continue gaming pending the results of arbitration. Any arbitration under this authority shall be conducted under the rules of the American Arbitration Association except that the arbitrators will be selected by the state picking one arbitrator, the tribe a second arbitrator and the two so chosen shall pick a third arbitrator. If the third arbitrator is not chosen in this manner within ten days after the second arbitrator is picked, the third arbitrator will be

chosen in accordance with the rules of the American Arbitration Association. In the event an allegation by the Tribe is not resolved to the satisfaction of the Tribe within ninety (90) days after service of the notice set forth in Section 5(1)(a) the Tribe may invoke arbitration as specified above.

(2) Nothing in Section 5(1) shall be construed to waive, limit, or restrict any remedy which is otherwise available to either party to enforce or resolve disputes concerning the provisions of this Compact.

SECTION 6. Effective Date.

This Compact shall be effective as of March 1, 1991, upon:

(1) Endorsement by the Tribal Chairman of the Tribe after approval by the Council;

(2) Endorsement by the Governor of the State;

(3) Approval by the Secretary of the Interior of the United States, and

(4) Publication in the Federal Register.

SECTION 7. Duration

This Compact shall be in effect perpetually.

SECTION 8. Notices.

All notices required or authorized to be served shall be served by first class mail at the following addresses:

Tribal Chairman
Seminole Tribe of Florida
6073 Stirling Road
Hollywood, Florida 33024

Governor
The Capital
Tallahassee, FL 32399

IN WITNESS WHEREOF, the Seminole Tribe and the State of Florida have hereunto set their hands and seals.

Dated: _____ Dated: _____

SEMINOLE TRIBE OF FLORIDA STATE OF FLORIDA

BY: s/ James E. Billie
James E. Billie
Tribal Chairman

BY:
Lawton Chiles
Governor

APPROVAL BY THE SECRETARY OF THE INTERIOR

The foregoing compact between the Seminole Tribe of Florida and the State of Florida entered into on ____, is, pursuant to Section 11 the Indian Gaming Regulatory Act, 102 Stat. 2472, hereby approved this _____ day of _____, 1991 and it shall be promptly submitted to the Federal Register for publication.

_____

Secretary of the Interior

EXHIBIT D

STATE OF FLORIDA
OFFICE of the GOVERNOR
THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

LAWTON CHILES
GOVERNOR

May 24, 1991

Jim Shore, Esq.
General Counsel
Seminole Tribe of Florida
6073 Stirling Road
Hollywood, Florida 33024

Dear Mr. Shore:

We are in receipt of your letter of March 4, 1991, which included a draft compact for the operation of certain class III gambling activities on the Seminole Reservation. This data [sic] [date] represents the point of commencement for negotiations with the Tribe under the Indian Gaming Regulatory Act (IGRA). Your request has been analyzed in light of our interpretation of controlling federal and Florida law and we respond as follows:

One of the requirements of the IGRA for the negotiation of a gaming compact is that the Indian gambling facility must be "located in a state that permits such gaming for any purpose, by any person, organization, or entity." 25 U.S.C. § 2710(d)(1)(B).

Further, 18 U.S.C. § 1166 incorporates state gambling laws, which are made enforceable by the United States. Section 849.15, Florida Statutes, prohibits the possession, sale, lease, etc., of slot machines, defined in § 849.16, Florida Statutes, as:

> one that is adapted for use in such a way that, as a result of the insertion of any piece of money, coin or other object, such machine or device is caused to operate or may be operated and if the user, by reason of an element of chance or of any other outcome of such operation unpredictable by him, may
>
> (a) receive or become entitled to receive any piece of money, credit, allowance, or thing of value.

Based upon these statutory sections, we do not believe that there is a legal basic for the state to negotiate a compact covering the operation of any of the electronic games referred to in the proposed compact. It is consequently also our opinion that the current operation of electronic games on the Seminole Reservation are illegal under the IGRA and Florida law as slot machines. The Attorney General has so informed the United States Attorney for the Middle District of Florida of this view and requested action on this mater.

With regard to other games referenced in the proposed compact, we believe that § 2710(d) (l) (B) would prevent negotiation of a compact for the operation of banking card games. Although § 849.085, Florida Statutes, does permit the paying of poker, pinochle, bridge, rummy canasta, hearts, dominoes, or mah-jongg under certain limited conditions, no banking card games

are permitted. In addition, the prohibition on the possession of gambling devices found in § 849.231, Florida Statutes, would prevent the playing of banking card games traditionally using a blackjack table or a "shoe or box" for the dealing of cards.

Our conclusion is that the only game which Florida law allows and therefore which can be the subject of compact negotiations is poker. This letter is, therefore, the State's response, pursuant to 25 U.S.C. § 2710(d)(3)(A), to the Tribe's request for a negotiated compact for poker or any other game permitted by § 849.085, Florida Statutes.

Upon review of the proposed compact, the proposed State authority to inspect and regulate the permitted games and the environment in which they are played is insufficient. Because of the case-intensive nature of these games, the possibility of criminal infiltration of the operation requires a substantial State presence. We suggest inclusion of provisions for: State licensing of employees, including criminal background investigations; State law enforcement and criminal court jurisdiction; regulation and background checks for providers to the Tribe; unlimited free access for State regulators and/or law enforcement officer; and rules for bet limits and rakeoffs.

In addition to the aforementioned criminal enforcement concerns, the State would require provisions addressing the following issues: health and safety code applicability; regulation of alcoholic beverages; and tort remedies for patrons. All of the issues raised in this letter have been the subject of compacts we believe are appropriate for inclusion in this compact.

Please contact me when you have discussed this counterproposal with the appropriate authorities in the Tribe and are prepared to

meet to discuss these matters more specifically. Thank you for your cooperation in this endeavor.

With kindest personal regards,

Sincerely,

s/ J. Hardin Peterson
J. Hardin Peterson
General Counsel

JHP/la

EXHIBIT E

Revised Section 2. Seminole Gaming Compact
(June 18, 1991)

SECTION 2. Authorized Class III Gaming

The Tribe may conduct the following games on tribal lands located within the boundaries of the State which are defined by Section 4 (4) of IGRA (25 U.S.C. § 2703(4)) as "Indian lands":

a. Any and all forms of poker, including banking games;

b. Any and all video, electronic and computer aided games which duplicate poker, bingo, pull-tabs, lotto, punchboards, tip jars, instant bingo or other games similar to bingo.

c. Pari-mutuel or other wagering on dog racing and horse racing, involving simulcasting or off track betting thereon;

d. Pari-mutuel wagering on jai alai or pelota, or games of skill;

e. Wagering on card games, including pinochle, bridge, rummy, canasta, hearts, dominoes, or mah jongg;

f. Casino nights gaming which includes, but is not limited to, craps, roulette, baccarat, slot machines, chemin de fer, black jack, pai gow, and backgammon.

g. Raffles

EXHIBIT F

STATE OF FLORIDA
OFFICE OF THE GOVERNOR
THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

LAWTON CHILES
GOVERNOR

July 25, 1991

Mr. James E. Billie
Tribal Chairman
Seminol Tribe Florida
6073 Stirling Road
Hollywood, Florida 33024

Dear Mr. Billie:

Govenor Chiles has referred your letter of June 18, 1991, to me for review and further comment.

Your letter advised that a legal memorandum would be submitted detailing the Tribe's views as to the meaning of the relevant statutory provisions, Jack M. Skelding, Jr., Esq. submitted this memorandum to me on July 1, 1991, and we have arranged to meet on July 29, 1991, to set an agenda or our negotiations. I hope at that meeting we can determine what matters we need to pursue and what additional investigations need to be made to arrive at a compact acceptable to the Seminole Tribe and to the State.

I regret that you were disappointed at the content of my letter of May 24, 1991, but it was simply my intent to advise the Seminole

Tribe of my understanding of the requirements of the Indian Gaming Regulatory Act and to provide the Tribe with some views expressed to me by the Office of the Attorney General.

I look forward to working with you, Mr. Shore and Mr. Skelding in arriving at an acceptable compact.

With kindest personal regards,

Sincerely,
s/ J. Hardin Peterson
J. Hardin Peterson
General Counsel

JHP/la

cc: Jack M. Skelding, Jr., Esq.
Jim Shore, Esq.

ANSWER AND DEFENSES FILED OCTOBER 10, 1991

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT

Case No. 91-6756-CIV-MARCUS

SEMINOLE TRIBE of FLORIDA

Plaintiff,

v.

STATE OF FLORIDA, LAWTON CHILES, Governor of the State of Florida,

Defendants.

ANSWER AND DEFENSES

COMES NOW, DEFENDANTS STATE of FLORIDA and LAWTON CHILES, in his official capacity as GOVERNOR of the STATE of FLORIDA, by and through the undersigned attorney, and state the following answers and defenses to the Complaint:

1. Admitted.

2. Defendants deny that the State of Florida through its Governor has failed to negotiate in good faith concerning a tribal-state compact as required by the Indian Gaming Regulatory Act.

3. Admitted.

4. Defendants admit that the Tribe "is recognized as possessing powers of self-government over its tribal lands" only to the extent provided by Federal law. As to the rest of the paragraph: admitted.

5. Admitted to the extent that the State of Florida is the entity which must negotiate in good faith concerning such matters as are required pursuant to the Indian Gaming Regulatory Act.

6. Admitted to the extent that Lawton Chiles is Governor of the State; however, Defendants deny that the Governor is required by the Indian Gaming Regulatory Act to conduct negotiations on behalf of the State.

7. The statute speaks for itself.

8. The statute speaks for itself.

9. The statute speaks for itself.

10. Defendants deny the first sentence. Defendants admit that the following activities are expressly authorized by statute: parimutuel betting on horse racing, parimutuel betting on dog racing, parimutuel betting on Jai Alai, intertrack wagering at parimutel sites, penny-ante poker and a state -owned and -operated lottery. Defendants deny the remainder of Paragraph 10, particularly with reference to the allegation that the State authorizes "off track betting" and uses "computer gambling devices."

11. Denied.

12. Defendants admit that both computers and electronic devices are used in a wide variety of lawful commercial settings;

however, Defendants deny that the State permits the use of computerized or electronic gambling devices.

13. Admitted.

14. Admitted that Mr. Peterson stated in his 15 February 1991 letter that the compact negotiations could be conducted "very simply," but only if "the [Tribe's proposed] compact meets requirements of the federal statute and the laws of this state."

15. Admitted, except that the Tribe also requested "banking games," which are prohibited by Section 849.08 of the Florida Statutes.

16. Admitted.

17. Admitted.

18. Defendants admit that such a document was received.

19. Admitted.

20. As to the first sentence: admitted. Defendants admit that the State agreed to negotiate concerning those games identified in Section 849.085 of the Florida Statutes. Defendants admit that the State refused to negotiate concerning any machine gaming prohibited by Sections 849.15 and 849.16 of the Florida Statutes. Otherwise, denied.

21. Defendants admit that they refused to negotiate concerning any machine gaming prohibited by Sections 849.15 and 849.16 of the Florida Statutes.

22. Defendants admit that the Indian Gaming Regulatory Act requires the State to respond in good faith to the Tribe's request to negotiate within 180 days, but denies that the Governor is specifically required to respond thereto.

23. Admitted.

24. Denied.

FIRST DEFENSE

Defendants State of Florida and Lawton Chiles, in his capacity as Governor of the State of Florida, have negotiated in good faith concerning those gaming activities required by the Indian Gaming Regulatory Act and would show thereto as follows:

A. All of the Tribe's letters and calls were responded to by the Governor's designated representative and the Office of the Attorney General;

B. Representatives of the Governor's office, the Attorney General's office, and parimutuel wagering regulatory agencies met with the Tribe to work out the details of a compact; however, the Tribe refused to specifically identify the games they wished to conduct and how they proposed to regulate them; and,

C. At the Tribe's request, the State seriously considered all of the legal memoranda submitted by the Tribe in support of its position; additionally, the State provided legal memoranda to the Tribe based on its independent in-depth research and analysis of the applicable Federal and State laws.

Respectfully Submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

s/ Jonathan A. Glogau
Jonathan A. Glogau
Florida Bar No. 371823
Assistant Attorney General
Special Projects Section
111-36 South Magnolia Drive
Tallahassee, Florida 32301
(904) 488-5899
Attorney for State of Florida

Answer and Defenses

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail on Bruce S. Rogow, Esquire, 2441 S.W. 28th Avenue, Ft. Lauderdale, Florida 33312, this 7th day of October, 1991.

s/ Jonathan A. Glogau
Jonathan A. Glogau
Florida Bar No. 371823
Assistant Attorney General
Special Projects Section
111-36 South Magnolia Drive
Tallahassee, Florida 32301
(904) 488-5899
Attorney for State of Florida

Courtesy Copies Provided To:

J. Hardin Peterson, Esquire
Office of the Governor
The Capitol
Tallahassee, FL 32399-0001

Jerry C. Straus
Hobbs, Straus, Dean and Wilder
1819 H Street, N.W., Suite 800
Washington, D.C. 20006

DEFENDANTS' MOTION TO DISMISS ON ELEVENTH AMENDMENT GROUNDS FILED DECEMBER 16, 1991

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 91-6756-CIV-MARCUS
Magistrate Bandstra

SEMINOLE TRIBE OF FLORIDA

Plaintiff,

vs.

STATE OF FLORIDA, LAWTON CHILES, Governor of the State of Florida,

Defendants.

DEFENDANTS' MOTION TO DISMISS
ON ELEVENTH AMENDMENT GROUNDS

Defendants, State of Florida and Lawton Chiles as Governor of the State of Florida, pursuant to rule 12(b)(1), F.R.C.P., hereby move this court to dismiss this action for lack of subject matter jurisdiction and state:

1. This is an action brought by an Indian Tribe against the State of Florida and its Governor pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701, *et seq*.

2. The asserted bases for subject matter jurisdiction of this court are 25 U.S.C. § 2710(d)(7)(A) and 28 U.S.C. §§ 1331, 1362, and 2201.

3. The Eleventh Amendment to the United States Constitution bars actions against the states in federal courts with some narrow exceptions, none of which are applicable to the instant action.

4. Because this action against Governor Chiles is in reality an action against the State, it is also barred by the Eleventh Amendment.

5. Defendants rely on the Memorandum of Points and Authorities filed contemporaneously herewith for support of this motion.

WHEREFORE, Defendants respectfully request this court to issue an order dismissing this case both against the State of Florida and its Governor.

Respectfully submitted this 13th day of December, 1991.

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

s/ Jonathan A. Glogau
Jonathan A. Glogau
Assistant Attorney General
Fla. Bar No. 371823
111-36 S. Magnolia Dr.
Tallahassee, Fl 32301
(904) 488-5899

COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by United States Mail on Bruce S. Rogow, 2441 S.W. 28th Avenue, Ft. Lauderdale, Florida 33312 and Andrew T. Lavin, P.O. Box 1040, Hollywood, Florida 33022, this 13th day of December, 1991.

s/ Jonathan A. Glogau
attorney

Courtesy copies to:

J. Hardin Peterson
Office of the Governor
The Capitol
Tallahassee, Florida 32399-0001

Jerry C. Strauss
Hobbs, Strauss, Dean & Wilder
1819 H Street N.W., Suite 800
Washington D.C. 20006